Teng Chee Wai dan lain-lain lwn Hock Soon Seng Sdn Bhd

MAHKAMAH TINGGI (IPOH) — GUAMAN SIVIL NO 22–156 TAHUN 2007
VT SINGHAM H
23 SEPTEMBER 2008

Prosedur Sivil — Penghakiman dan perintah — Penghakiman persetujuan — Permohonan untuk mengetepikan penghakiman — Sama ada terdapat niat jahat — Sama ada cubaan untuk melambatkan proses mahkamah

Melalui satu Guaman Sivil No 22–206 Tahun 2006 (guaman sivil 2006), defendan memperolehi penghakiman persetujuan terhadap plaintif pada 16 November 2006. Terlebih dahulu, plaintif pertama telah mengemukakan cadangan penyelesaian dan seterusnya membuat tiga bayaran ansuran kepada defendan sebelum penghakiman persetujuan tersebut dirakamkan di antara kedua-dua pihak. Seterusnya, pihak plaintif memfailkan writ saman dan penyata tuntutan (writ saman) pada 4 Jun 2007 bagi mengetepikan penghakiman persetujuan tersebut. Manakala defendan memohon membatalkan writ saman tersebut tetapi ditolak oleh penolong kanan pendaftar pada 14 Februari 2008. Defendan menghujah bahawa writ saman tersebut, antara lain; (i) tidak mendedahkan sebarang kausa tindakan yang munasabah; (ii) bahawa ianya dibuat terlalu lambat dan memprejudiskan defendan, (iii) bahawa permohonan plaintif untuk mengetepikan penghakiman persetujuan yang telah muktamad adalah remeh, menyusahkan dan merupakan penyalahgunaan proses mahkamah dan hanya bertujuan melambatkan prosiding kebankrapan terhadap plaintif. Walau bagaimanapun, plaintif membantah dan menyatakan bahawa semasa plantif pertama menandatangani surat jaminan dan surat perjanjian dengan syarikat defendan berkaitan tuntutan dalam guaman sivil 2006, plaintif pertama adalah seorang bankrap. Sehubungan itu, defendan menyatakan antara lain; (i) bahawa plaintif pertama telahpun dilepaskan daripada kebankrapan semasa penghakiman persetujuan direkodkan dan disokong carian rasmi yang diperolehi dari Jabatan Insolvensi; (ii) plaintif cuba mengetepikan penghakiman persetujuan bagi mengelakkan tanggungjawab mereka membayar amaun penghakiman persetujuan tersebut dan ianya adalah dengan niat jahat; (iii) plaintif diestop daripada mencabar atau mengetepikan penghakiman persetujuan tersebut dan plaintif telah melepaskan peluang mencabar atau meneruskan di atas merit tuntutan guaman sivil 2006. Maka defendan merayu terhadap penolakan permohonan membatalkan writ saman tersebut.

Diputuskan, membenarkan rayuan dengan kos:

(1) Tuntutan plaintif dalam memfailkan writ saman dan penyata tuntutan terhadap defendan bagi mengetepikan penghakiman persetujuan yang direkodkan pada 16 November 2006 dalam guaman sivil 2006 adalah satu cubaan melambatkan proses mahkamah dan keadilan merupakan remeh, menyusahkan dan penyalahgunaan proses mahkamah dan plaintif diestop daripada mencabar penghakiman persetujuan tersebut (lihat perenggan 5).

(2) Tidak ada keterangan bahawa plaintif pertama telah dipengaruhi beban atau tekanan, desakan atau terma-terma penghakiman persetujuan yang kurang jelas. Sebaliknya, terma-terma penghakiman persetujuan tersebut adalah jelas dan terang (lihat perenggan 12).

(3) Tujuan plaintif pertama memfailkan writ saman dan penyata tuntutan terhadap defendan adalah satu percubaan mengetepikan penghakiman persetujuan supaya melambatkan prosiding kebankrapan yang telah dimulakan oleh defendan terhadap plaintif. Mahkamah tidak akan melayan atau menggalakkan mana-mana pihak dalam satu tindakan di mahkamah di mana pihak-pihak telah bersetuju dan mengarahkan peguamnya merekodkan penghakiman persetujuan yang mengandungi terma-terma persetujuan dan setelah memperoleh nasihat peguam dan kemudian di atas fikiran semula cuba mencabar atau mempertikaikan penghakiman persetujuan (lihat perenggan 12).

[English summary

By a Civil Suit No 22–206 of 2006 ('the 2006 civil suit'), the defendant obtained a consent judgment against the plaintiffs on 16 November 2006. Prior to that, the first plaintiff had produced a settlement proposal and further made three instalment payments to the defendant before the consent judgment was recorded between both parties. Thereafter, the plaintiffs filed a writ of summons and a statement of claim ('writ of summons') on 4 June 2007 to set aside the consent judgment. On the other hand the defendant applied to strike out the writ of summons but was dismissed by the senior assistant registrar on 14 February 2008. The defendant submitted that the writ of summons, inter alia: (i) did not disclose any reasonable cause of action; (ii) that there was an inordinate delay in its making and would prejudice the defendant; (iii) that the plaintiffs' application to set aside the conclusive consent judgment was frivolous, vexatious and an abuse of the process of the court and only intended to delay the bankruptcy proceedings against the plaintiffs. However, the plaintiffs objected and stated that at the time when the first plaintiff signed the guarantee letter and the agreement letter with the defendant company in relation to the claim in the 2006 civil suit, the first plaintiff was a bankrupt. With regards to this, the defendant

stated, inter alia: (i) that the first plaintiff had duly been discharged from bankruptcy when the consent judgment was recorded and was supported by the formal search obtained by the Insolvency Department; (ii) the plaintiffs attempted to set aside the consent judgment to avoid their obligation in paying the sum for the consent judgment and it was in bad faith; (iii) the plaintiffs were estopped from challenging or setting aside the consent judgment and the plaintiffs had waived their opportunity to challenge or proceed on the merits of the 2006 civil suit claim. Hence, the defendant appealed against the dismissal of the application to strike out the writ of summons.

Held, allowing the appeal with costs:

(1) The plaintiffs' claim in filing the writ of summons and the statement of claim against the defendant to set aside the consent judgment recorded on 16 November 2006 in the 2006 civil suit was an attempt to delay the court process and justice was frivolous, vexatious and an abuse of the court process and the plaintiffs were estopped from challenging the consent judgment (see para 5).

(2) There was no evidence that the plaintiffs influenced by the weight or pressure, urge or terms of the consent judgment that was ambiguous. On the other hand, the terms of the consent judgment was plain and obvious (see para 12).

(3) The first plaintiff's intention to file the writ of summons and the statement of claim against the defendant was an attempt to set aside the consent judgment in order to delay the bankruptcy proceedings initiated by the defendant against the plaintiff. The court should not entertain or encourage any party in an action in court where the parties had agreed and instructed their counsel to record the consent judgment containing the agreed terms and after obtaining legal advise to subsequently upon an afterthought attempt to challenge or dispute the consent judgment (see para 12).]

Nota-nota

Untuk kes-kes mengenai penghakiman persetujuan, lihat 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) perenggan 4064–4065.

Kes-kes yang dirujuk

Andamy Plantations Sdn Bhd v Turus Saladou & Ors [2002] 6 CLJ 201, MT (dirujuk)

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36; [1993] 2 AMR 1969, MA (dirujuk)

Castro v Murray (1875) 10 Ex 213 (dirujuk)

A *Diversey (Far East) v Chai Chung Ching Chester & Ors* [1993] 1 SLR 535, MR (dirujuk)
Dyson v Attorney General (No 1) [1911] 1 KB 410, MR (dirujuk)
Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin & Ors [1998] 1 SLR 374, MR (dirujuk)
B *Goh Koon Suan v Heng Gek Kiau & Ors* [1991] 2 MLJ 307, MT (dirujuk)
Harrison v Bottenheim (1876) 26 WR 362 (dirujuk)
Huzama Corp v KMS Builders Sdn Bhd & 2 Ors [1999] 4 AMR 4653 (dirujuk)
Jurutera Consultant (SEA) Sdn Bhd & Ors v Eddie Lee Kim Tak & Ors [1999]
C 1 MLJ 381, MR (dirujuk)
Khaw Poh Chhuan v Ng Gaik Peng [1996] 1 MLJ 761, MP (dirujuk)
Malaysian Building Society Bhd v Tan Sri General Ungku Nazaruddin bin Ungku Muhamad [1998] 2 MLJ 425; [1998] 2 AMR 1666, MR (dirujuk)
Nagle v Feilden & Ors [1966] 2 QB 633, MR (dirujuk)
D *Pengiran Othman Shah bin Pengiran Mohd Yusoff & Anor v Karambunai Resorts Sdn Bhd (formerly known as Lipkland (Sabah) Sdn Bhd) & Ors* [1996] 1 MLJ 309, MR (dirujuk)
Prenn v Simmonds [1971] 3 All ER 237, HL (dirujuk)
Rasiah Munusamy v Lim Tan & Sons Sdn Bhd [1985] 2 MLJ 291, MA
E (dirujuk)
Re R (a minor) [1995] 1 WLR 184 (dirujuk)
Sia Siew Hong v Lim Gim Chian [1995] 3 MLJ 141, MR (dirujuk)
South American and Mexican Co, In Re, Ex parte Bank of England [1895] 1 Ch 37, MR (dirujuk)
F *Tan Geok Lan (f) v La Kuan @ Lian Kuan* [2003] 3 MLJ 210, MR (dirujuk)
Teh Poh Wah v Seremban Securities Sdn Bhd [1996] 1 MLJ 701, MR (dirujuk)
Toh Seow Ngan & Ors v Toh Seak Keng & Ors [1990] 2 MLJ 303, MA (dirujuk)
Wilding v Sanderson [1897] 2 Ch 534, MR (dirujuk)
G *Wright v Prescot Urban District Council* [1916] 115 LT 772 (dirujuk)
Zainudin bin Muhammad v Atsco Ltd & Anor [2003] 1 MLJ 369; [2003] 1 CLJ 446, MR (dirujuk)

Modeshanantham (Yee Nantham Leong & Partners) bagi pihak plaintif-plaintif.
H *N Selvarajah (Raj Selva & Co) bagi pihak defendan.*

VT Singham H:

I **[1]** Ini adalah satu rayuan kepada hakim dalam kamar (lampiran 18) oleh defendan terhadap keputusan penolong kanan pendaftar ('PKP') yang diberi pada 14 Februari 2008 (lampiran 25) di mana permohonan defendan (lampiran 7) untuk membatalkan writ saman dan pernyataan tuntutan plaintif-plaintif (lampiran 1) telah ditolak dengan kos.

[2] Permohonan defendan (lampiran 7) adalah untuk membatalkan writ saman dan pernyataan tuntutan plaintif-plaintif (lampiran 1) terhadap defendan di mana plaintif-plaintif menuntut penghakiman persetujuan yang dirakamkan pada 16 November 2006 dalam Guaman Sivil No 22–206 Tahun 2006 ('guaman sivil 2006') di antara defendan sebagai plaintif dan plaintif-plaintif sebagai defendan-defendan diketepikan. Plaintif dalam guaman sivil 2006, adalah defendan dalam kes ini (dirujuk sebagai guaman sivil 2007) manakala defendan-defendan dalam guaman sivil 2006 adalah plaintif-plaintif dalam guaman sivil 2007 ini. Alasan-alasan yang dibangkitkan oleh defendan dalam guaman sivil 2007 ini untuk membatalkan writ saman dan pernyataan tuntutan plaintif-plaintif adalah:

(a) ia tidak mendedahkan sebarang kausa tindakan yang munasabah;

(b) ianya dibuat terlalu lambat dan memprejudiskan defendan;

(c) permohonan pihak plaintif untuk mengenepikan penghakiman persetujuan yang muktamad adalah remeh, menyusahkan dan penyalahgunaan proses mahkamah dan hanya untuk melambatkan prosiding kebankrapan terhadap plaintif-plaintif; dan

(d) lain-lain alasan adalah seperti dinyatakan dalam afidavit tersebut yang difailkan untuk menyokong permohonan ini.

[3] Manakala alasan yang digunapakai oleh plaintif-plaintif dalam guaman sivil 2007 ini untuk mengetepikan penghakiman persetujuan yang direkodkan di mahkamah ini pada 16 November 2006 dalam guaman sivil 2006 adalah pada masa plaintif pertama menandatangani surat jaminan sebagai penjamin pada 20 Mei 2005 dan surat perjanjian pada 6 Januari 2006 kepada syarikat defendan pertama terhadap tuntutan di guaman sivil 2006, beliau adalah seorang bankrap.

[4] Walau bagaimanapun, defendan dalam guaman sivil 2007 ini telah menunjukkan melalui afidavit sokongan (lampiran 8) bahawa:

(a) Pada masa penghakiman persetujuan direkodkan pada 16 November 2006, defendan-defendan dalam guaman sivil 2006 telah diwakili oleh peguam En Arthur Yeong dari firma Tetuan Arthur Yeong & Associates.

(b) Penghakiman persetujuan ditandatangani oleh peguam En Arthur Yeong yang sendiri telah hadir di mahkamah ini pada 16 November 2006 untuk mengesahkan terma-terma persetujuan seperti yang terkandung dalam penghakiman persetujuan (lampiran 8) di guaman sivil 2006 dan diekshibitkan sebagai eksh LSL8 di afidavit sokongan (lampiran 8) dalam guaman sivil 2007 ini.

(c) Sebaik sahaja penghakiman persetujuan direkodkan pada 16 November 2006 dalam guaman sivil 2006 seperti di draf yang diekshibitkan

sebagai eksh LSL8 di afidavit sokongan (lampiran 8) dan dikemukakan di mahkamah terbuka ini, peguam Encik Arthur Yeong yang bertindak bagi defendan-defendan dalam guaman sivil 2006 telah menghantar dua cek berjumlah RM160,000 bagi pembayaran kepada amaun penghakiman persetujuan tersebut.

(d) Tidak ada sebarang dakwaan bahawa *plaintif pertama*, iaitu defendan kedua dalam kes guaman sivil 2006, telah disalahnasihatkan atau disalahnyata atau didesak untuk bersetuju supaya penghakiman persetujuan tersebut dapat direkodkan. Plaintif pertama telahpun dilepaskan dari kebankrapan pada masa penghakiman persetujuan direkodkan pada 16 November 2006 dan ini disokong oleh carian rasmi yang dibuat di Jabatan Insolvensi pada 11 Ogos 2006 (eksh LSL12) di afidavit (lampiran 8) dirujuk.

(e) Plaintif-plaintif memfailkan writ saman ini pada 4 Jun 2007, iaitu, selepas defendan memulakan prosiding kebankrapan terhadap plaintif-plaintif dan setelah terdapat kemungkiran dalam pembayaran amaun seperti dipersetujui dalam penghakiman persetujuan tersebut. Tujuan plaintif-plaintif cuba untuk mengetepikan penghakiman persetujuan tersebut adalah untuk mengelakkan dari tanggungjawab mereka untuk membayar amaun penghakiman persetujuan tersebut dan ini adalah dengan niat jahat (mala fide).

(f) Plaintif-plaintif diestop dari mencabar atau mengetepikan penghakiman persetujuan tersebut kerana ia adalah penghakiman persetujuan yang muktamad dan plaintif-plaintif telah melepaskan peluang untuk mencabar atau meneruskan di atas merit tuntutan di guaman sivil 2006.

KEPUTUSAN

[5] Setelah membaca dan meneliti saman dalam kamar (lampiran 7), afidavit sokongan bagi defendan (lampiran 8), afidavit jawapan plaintif-plaintif (lampiran 10), afidavit jawapan bagi defendan (lampiran 12), hujah-hujah bertulis dan lisan dan autoriti-autoriti yang dikemukakan oleh kedua-dua pihak dan autoriti yang diselidik oleh mahkamah ini, mahkamah ini berpendapat bahawa tuntutan plaintif-plaintif dalam memfailkan writ saman dan pernyataan tuntutan (lampiran 1) ini terhadap defendan untuk mengetepikan penghakiman persetujuan yang direkodkan pada 16 November 2006 di guaman sivil 2006 adalah satu cubaan untuk melambatkan proses mahkamah dan keadilan yang boleh dikatakan remeh, menyusahkan dan penyalahgunaan proses mahkamah (frivolous, vexatious and an abuse of the process of the court) dan plaintif-plaintif diestop dari mencabar penghakiman persetujuan tersebut dan tidak harus dibenarkan untuk berbuat sedemikian.

[6] Dalam kes *Wilding v Sanderson* [1897] 2 Ch 534 di mana Byrne H di ms 543 berkata:

> A consent judgment or order is meant to be the formal result and expression of an agreement already arrived at between the parties to proceedings embodied in an order of the court. The fact of its being so expressed puts the parties in a different position from the position of those who have simply entered into an ordinary agreement. It is, of course, enforceable while it stands, and a party affected by it cannot, if he conceives he is entitled to relief from its operation, simply wait until it is sought to be enforced against him, and then raise by way of defence the matters in respect of which he desires to be relieved. He must, when once it has been completed, obey it unless and until he can get it set aside in proceedings duly constituted for the purpose (rujuk kes *Wiltopps (Asia) Ltd v Drew & Napier & Anor* 2000 3 SLR 244 di ms 252).

[7] Dalam kes *In Re South American and Mexican Co Ex parte Bank of England* [1895] 1 Ch 37 Vaughan William H (pada masa itu) berkata di ms 45:

> ... it has always been the law that a judgment by consent or by default raises an estoppel just in the same way as a judgment after the court has exercised a judicial discretion in the matter. The basis of the estoppel is that, when parties have once litigated a matter it is in the interest of the estate that litigation should come to an end; and if they agree upon a result, or upon a verdict, or upon a judgment, or upon a verdict and judgment, as the case may be, an estoppel is raised as to all the matters in respect of which an estoppel would have been raised by judgment if the case had been fought out to the bitter end.

Di sini adalah wajar untuk menyatakan bahawa keputusan Vaughan William H telah dipersetujui (affirmed) oleh Mahkamah Rayuan di mana Lord Herschell LC berkata di ms 50:

> The truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the court after the matter has been fought out to the end. And I think it would be very mischievous if one were not to give a fair and reasonable interpretation to such judgments, and were to allow questions that were really involved in the action to be fought over again in a subsequent action. I think, therefore, the judgment should be affirmed, and the appeal dismissed with costs.

[8] Dalam kes *Pengiran Othman Shah bin Pengiran Mohd Yusoff & Anor v Karambunai Resorts Sdn Bhd (formerly known as Lipkland (Sabah) Sdn Bhd) & Ors* [1996] 1 MLJ 309 di ms 321, 330, Gopal Sri Ram HMR bagi Mahkamah Rayuan berkata:

> When a question of law becomes an issue, this in itself will not prevent the court from granting the application for as long as the court is satisfied that the issue of law is unarguable and unsustainable it may proceed to determine that question. See

Bank Negara Malaysia v Mohd Ismail & Ors [1992] 1 SCR 445. Likewise, where the affidavit evidence discloses a dispute of facts, such facts must be analysed and if they are found to be inconsistent with undisputed contemporary documents or inherently improbable in themselves, the court is entitled to reject those facts and proceed upon the undisputed contemporaneous documentary evidence.

As for the issue of law raised against the fourth respondent since that can be determined from the undisputed documentary evidence, a trial of the action will not add anything more to what has already been canvassed before the trial judge and before us. If anything at all if this suit proceeds to trial it will be with the hope that something may turn up at the trial but in the light of the affidavit and documentary evidence, we found that the respondents have no case to answer.

[9] Dalam kes *Andamy Plantations Sdn Bhd v Turus Saladou & Ors* [2002] 6 CLJ 201 di ms 206, Richard Malanjum H (pada masa itu) berkata:

All that was done by the court in the main action was to record what was agreed by the parties. And I do not think the question of admission of law or misapprehension of the law arises where two adversaries agree to settle their dispute. As such the issue of who is right or wrong in law does not come into the picture when an amicable settlement is reached. It is therefore my view that *there is no merit in saying that the consent order was secured on the basis of erroneous admission of law. Once the parties inform the court that an amicable settlement has been reached I do not think it is the business of the court to find out the reason or reasons*. Indeed that is the very essence in mediation as an alternative mean to dispute resolution. *Thus and with respect I think the plaintiffs in the present action may have not appreciated the significance of the settlement agreement that led to the entry of the consent order*. (Penekanan ditambah.)

[10] Dalam kes *Zainudin bin Muhammad v Atsco Ltd & Anor* [2003] 1 MLJ 369; [2003] 1 CLJ 446, YAA Richard Malanjum HMR (pada masa itu) bagi Mahkamah Rayuan berkata di ms 371 (MLJ); ms 448–449 (CLJ):

Now it is trite law that a consent order cannot be varied unless with the agreement of the other party or parties affected by it. Neither can it be set aside unless the conditions are met (see *Tio Chee Hing v Tractors Malaysia Bhd* [1972] 1 LNS 157; [1973] 1 MLJ 66; *Maria Chia Sook Lan v Bank of China* [1975] 1 LNS 100; [1976] 1 MLJ 245 (also [1975–1977] SLR 9); *Huddersfield Banking Co Ltd v Henry Lister & Son Ltd* [1895] 2 Ch 273; *Matthews v Minister* [1886–90] All ER Rep 251).

In the instant case, the requirements were not met. The respondent objected to the application and there was no allegation advanced to justify in law the setting aside of the consent order or its variation in any manner. *There was no dispute that the consent order was secured with the benefit of legal advice to all parties involved*. The assertions relied upon by the applicant in both the motions were either issues that could have been raised before the consent order was agreed upon or that they were irrelevant. For instance it is his averment that the hearing of the suit against him

has been long due. However that has nothing to do in him complying with the terms of the consent order. After all he was given a conditional leave to defend the suit. In any event such a complaint is purely an administrative issue which his solicitors should be able to handle. As to the constraint of his travel overseas that should be of no relevance in his inability to meet the term of the consent order. In this day and age transmitting money from one country to another does not require the presence of the account holder. Indeed we would think that it could tantamount to having misled the other party into agreeing to the consent order when the applicant could have known of his limitation in meeting the terms therein. It would be quite unfair to the respondents that the applicant, after securing a conditional leave to defend the suit, should be allowed to renege or delay in the compliance with the main term of the consent order on the grounds which should have been within his personal knowledge at the material time. (Penekanan ditambah.)

For the reasons given we dismissed both the applications.

[11] Dalam kes ini, mahkamah ini berpuas hati bahawa proses mahkamah telah digunapakai untuk tujuan yang tidak baik (unlawful object) dan adalah jelas bahawa tuntutan plaintif-plaintif adalah remeh (frivolous) dan penyalahgunaan proses mahkamah dan bukan dengan tujuan untuk mencapai keadilan (rujuk kes *Castro v Murray* (1875) 10 Ex 213; *Huzama Corp v KMS Builders Sdn Bhd & 2 Ors* [1999] 4 AMR 4653; *Malaysian Building Society Bhd v Tan Sri General Ungku Nazaruddin bin Ungku Muhamad* [1998] 2 MLJ 425 di ms 434; [1998] 2 AMR 1666 di ms 1699).

[12] Mahkamah ini tidak akan membenarkan atau merekodkan penghakiman persetujuan atau perintah kecuali mahkamah ini berpuas hati bahawa kesemua pihak bersetuju kepada terma-terma seperti direkodkan dalam draf penghakiman persetujuan yang dikemukakan kepada mahkamah (rujuk kes *Tan Geok Lan (f) v La Kuan @ Lian Kuan* [2003] 3 MLJ 210). Mahkamah ini juga mendapati kes ini bukan satu keadaan di mana plaintif pertama bukanlah salah satu pihak dalam persetujuan yang dicapai di antara defendan dan plaintif-plaintif lain dalam guaman sivil 2006 di mana dalam keadaan tersebut boleh dikatakan plaintif pertama mungkin diprejudiskan dan bebas memohon untuk mengetepikan penghakiman persetujuan yang direkodkan terhadap beliau dan di mana persetujuan beliau tidak diperolehi. Dalam kes ini, defendan-defendan sejak 10 Februari 2006 apabila menerima notis tuntutan bertarikh 27 Januari 2006 telah mengemukakan cadangan penyelesaian dan defendan pertama juga telah membuat bayaran ansuran satu hingga tiga. Walau bagaimanapun tiada tarikh penghakiman persetujuan direkodkan pada 16 November 2006, surat peguam plaintif bertarikh 17 Oktober 2006 telah pun menunjukkan penyelesaian telah dicapai di antara kedua-dua pihak lebih awal (rujuk kes *Toh Seow Ngan & Ors v Toh Seak Keng & Ors* [1990] 2 MLJ 303). Seterusnya, tidak ada keterangan bahawa plaintif pertama telah dipengaruhi beban atau terdapat tekanan, desakan atau

terma-terma yang kurang jelas atau kabur. Sebaliknya, terma-terma penghakiman persetujuan tersebut di dalam kes di hadapan mahkamah ini adalah jelas dan terang dan bukan dalam keadaan tidak jelas atau kabur (rujuk kes *Diversey (Far East) v Chai Chung Ching Chester & Ors* [1993] 1 SLR 535; *Prenn v Simmonds* [1971] 3 All ER 237; *Re R (a minor)* [1995] 1 WLR 184; *Khaw Poh Chhuan v Ng Gaik Peng* [1996] 1 MLJ 761). Seperti yang mahkamah ini telah putuskan dan menyatakan dalam alasan-alasan penghakiman di permohonan untuk menggantung pelaksanaan, defendan mempunyai satu harapan yang sah (legitimate expectation) bahawa pada masa penghakiman persetujuan dirakamkan, terma-terma perjanjian seperti terkandung dalam penghakiman persetujuan akan dipatuhi dan tuntutan akan dijelaskan dan adalah muktamad walaupun defendan tidak dimaklumkan bahawa kononnya plaintif pertama adalah seorang bankrap pada masa itu. Walau bagaimanapun, plaintif pertama sememangnya bukan lagi seorang bankrap pada masa penghakiman persetujuan direkodkan pada 16 November 2006 melalui peguam yang mewakili plaintif pertama dan perkara ini disahkan melalui satu carian rasmi dibuat di Jabatan Insolvensi Malaysia pada 11 Ogos 2006 oleh defendan dan ini tidak dinafikan oleh plaintif pertama. Dari fakta dan latar belakang kes ini adalah jelas bahawa tujuan plaintif pertama memfailkan writ saman untuk cuba mengetepikan penghakiman persetujuan ini adalah untuk melambatkan prosiding kebankrapan yang telah dimulakan oleh defendan terhadap plaintif-plaintif dimana boleh dikatakan berniat jahat (mala fide) dan salah menggunakan proses mahkamah. Selanjutnya, mahkamah ini tidak akan melayan atau menggalakkan mana-mana pihak dalam satu tindakan atau prosiding di mahkamah di mana pihak telah bersetuju dan mengarahkan peguamnya untuk merekodkan penghakiman persetujuan yang mengandungi terma-terma persetujuan dan setelah memperolehi nasihat peguam dan kemudian di atas fikiran semula cuba untuk mencabar atau mempertikaikan penghakiman persetujuan kerana tindakan seperti itu akan membawa atau bercanggah di atas doktrin kebebasan dan santiti kontrak dan muktamad (finality) melainkan terdapat asas-asas yang kukuh dan boleh diterima dari segi undang-undang (rujuk kes *Jurutera Consultant (SEA) Sdn Bhd & Ors v Eddie Lee Kim Tak & Ors* [1999] 1 MLJ 381 di ms 383–384). Walau bagaimanapun, alasan yang dikemukakan oleh plaintif pertama untuk mengetepikan penghakiman persetujuan atau perintah bukanlah alasan-alasan di atas fakta kes ini untuk diberi layanan.

[13] Mahkamah ini memang sedar dan adalah undang-undang trite bahawa seorang litigan tidak patut dihalang atau dihalau daripada kerusi penghakiman atau diputuskan secara ringkas sekiranya terdapat fakta-fakta yang material yang dipertikaikan oleh pihak-pihak dan memerlukan pemeriksaan balas di atas merit untuk membuat keputusan yang adil. Dengan itu, writ saman dan pernyataan tuntutan dalam keadaan sebegitu tidak sepatutnya dibatalkan secara ringkas (rujuk kes *Dyson v Attorney General*

(No 1) [1911] 1 KB 410 di ms 419; *Harrison v Bottenheim* (1876) 26 WR 362 di ms 363; *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd* [1993] 3 MLJ 36; [1993] 2 AMR 1969). Walau bagaimanapun, setiap kes hendaklah diteliti setelah memberi pertimbangan berdasarkan kepada fakta, keadaan dan latarbelakang kes itu sebelum prinsip-prinsip yang ditetapkan dipakai. Malangnya, dalam kes ini, fakta-fakta, keadaan dan latarbelakang adalah berbeza dari fakta yang diputuskan oleh mahkamah-mahkamah lain dan Mahkamah Rayuan dalam kes-kes yang dilaporkan di mana pembatalan pliding atau tuntutan tidak dibenarkan.

[14] Dalam kes *Nagle v Feilden* [1966] 2 QB 633 di ms 648, mahkamah berkata:

> It is only in plain and obvious cases, when the action is one which cannot succeed or is in some way an abuse of the process of the court and unarguable, that the summary remedy will be applied (per Danckwerts and Salmon LJJ).
>
> The summary remedy which has been applied to this action is one which is only to be applied in plain and obvious case, *when the action is one which cannot succeed or is in some way an abuse of the process of the court* (per Danckwerts LJ). (Penekanan ditambah.)

(Rujuk juga kepada keputusan mahkamah ini dalam kes *Tumasek Beckmann Cutlery Sdn Bhd v Bromma (Malaysia) Sdn Bhd* [2008] 5 AMR 71), di mana mahkamah ini telah merujuk dan memberi pertimbangan kepada banyak kes tempatan dan dari bidang kuasa Mahkamah-Mahkamah Komanwel tentang prinsip di mana permohonan untuk membatalkan pliding writ dan pernyataan tuntutan oleh satu pihak diputuskan).

[15] Dalam kes *Teh Poh Wah v Seremban Securities Sdn Bhd* [1996] 1 MLJ 701 di ms 706–708, Gopal Sri Ram HMR berkata:

> This is a case where the wife, by her actings, would have led a reasonable man to believe that she had given her husband a carte blanche to act on her behalf. The undisputed facts reasonably support an inference that the respondent was influenced by the conduct of the appellant to entertain such a belief. She cannot therefore now assert facts that would contradict her earlier conduct. That would be inequitable and therefore unjust. She must face the consequences of the series of events which she set in motion by acceding to the husband's plan. If, it were otherwise, it would amount to our letting her off the hook for assisting in the intentional breach of an order of court. That would, in our judgment, amount to condoning an attempt to subvert the machinery of justice. We will not tolerate such a result.
>
> *In our judgment, this appeal may quite satisfactorily be resolved by reference to the doctrine of estoppel. It is a flexible doctrine by which courts seek to do essential justice between litigating parties*. (Penekanan ditambah.)

A In this context we find it sufficient to quote the following passage in the judgment of the Federal Court in *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331 at p 344; [1995] 4 CLJ 283 upon the wide scope of the doctrine:

B > The time has come for this court to recognise that the doctrine of estoppel is a flexible principle by which justice is done according to the circumstances of the case. It is a doctrine of wide utility and has been resorted to in varying fact patterns to achieve justice. Indeed, the circumstances in which the doctrine may operate are endless.

C Edgar Joseph Jr J (as he then was) in an illuminating judgment in *Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd & Anor* [1989] 2 MLJ 202 at p 244 applied the doctrine in a broad and liberal fashion to prevent a defendant from relying upon the provisions of the Limitation Act 1952.

D The doctrine may be applied to enlarge or to reduce the rights or obligations of a party under a contract (*Sarat Chunder Dey v Gopal Chunder Laha* LR 19 IA 203, *Amalgamated Investment and Property Co Ltd (in liquidation) v Texas Commerce International Bank Ltd* [1982] 1 QB 84; [1981] 3 All ER 577; [1981] 3 WLR 565). It has operated to prevent a litigant from denying the validity of an otherwise invalid trust (see *Commissioner for Religious Affairs, Trengganu & Ors v Tengku Mariam bte Tengku Sri Wa Raja & Anor* [1970] 1 MLJ 222) or the validity of an option in a lease E declared by statute to be invalid for want of registration (see *Taylor Fashions Ltd v Liverpool Victoria Friendly Society* [1981] 1 All ER 897; [1981] 2 WLR 576). *It has been applied to prevent a litigant from asserting that there was no valid and binding contract between him and his opponent* (see *Waltons Stores' (Interstate) Ltd v Maher* (1988) 164 CLR 387) *and to create binding obligations where none previously existed* F (see *Spirov Lintern* [1973] 3 All ER 319; [1973] 1 WLR 1002). *It may operate to bind parties as to the meaning or legal effect of a document or a clause in a contract which they have settled upon* (see the *Amalgamated* case) or *which one party to the contract has represented or encouraged the other to believe as the true legal effect or meaning* (*American Surety Co of New York v Calgary Milling Co Ltd* (1919) 48 DLR 295; *De Tchihatchef v Salerni Coupling Ltd* [1932] 1 Ch 330; Taylor Fashions. (Penekanan ditambah.)

G It is settled law that the summary power to strike out a pleading ought not to be invoked save in plain and obvious cases. There are many cases which recite this proposition and we do not intend to repeat them here. *Suffice to say that this is a plain and obvious case in which the judge was well entitled to exercise the summary power*. (Penekanan ditambah.)

H

[16] Dalam kes *Sia Siew Hong v Lim Gim Chian* [1995] 3 MLJ 141, Gopal Sri Ram HMR merujuk kepada 'doctrine of estoppel' dan mengatakan di ms 155:

I > … equity will not permit statute to be used as an engine of fraud. It is a doctrine of wide operation.
>
> The doctrine, when invoked, has the effect of precluding a litigant who is guilty of unconscionable or unmeritorious conduct from relying upon a statutory provision that would defeat his opponent's case. An application of the doctrine

requires a meticulous examination of the facts and circumstances of the particular case to determine whether there has been any inequitable conduct. The doctrine has been applied to several statutes, including those governing contracts, wills, trusts and assignments. The categories of statutes to which the doctrine may be applied are not closed and I am certainly unable to find any serious impediment in applying it to bar a litigant from raising and relying upon the provisions of the Limitation Act 1953.

[17] Dalam kes *Rasiah Munusamy v Lim Tan & Sons Sdn Bhd* [1985] 2 MLJ 291, Mohamed Azmi HMA berkata di ms 296:

It is not fraud in the common law sense, but an unmeritorious and unconscionable conduct which is known as constructive or equitable fraud.

[18] Dalam kes *Goh Koon Suan v Heng Gek Kiau & Ors* [1991] 2 MLJ 309 Yong Pung How CJ berkata di ms 311:

As to the procedure used to strike out the plaintiff's writ and statement of claim, the application was not made the ground that there was no reasonable cause of action (ground (a)) because no evidence would have been admissible on an application under that ground. The second to fifth defendants applied under O 18 r 19(1) on the ground that the proceedings were vexatious (ground (b)) or, alternatively, were otherwise an abuse of the process of the court (ground (d)). *A proceeding is said to be vexatious when the party bringing it is not acting bona fide, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result: Fowitt's Dictionary of English Law. Abuse of the process of the court is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive: Words & Phrases Judicially Defined*. The plaintiff's action against the second to fifth defendants was clearly unsustainable, and the plaintiff could not possibly hope to achieve any practical result. Neither was the action instituted in good faith, as the plaintiffs solicitors must have known that the second to fifth defendants had no choice but to hand over the 10% deposit of $28,000 and the cashier's orders to their client, the first defendant. In my opinion, the plaintiffs action in joining the second to fifth defendants was meant to embarrass them, and that being so, an order to strike out under O 18 r 19 was properly made, to obviate the need for a full trial I would therefore dismiss the appeal with costs.

[19] Dalam kes *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin & Ors* [1998] 1 SLR 374 Mahkamah Rayuan berkata di ms 384:

The term abuse of the process of the court in O 18 r 19(1)(d), *has been given a wide interpretation by the courts*. It includes consideration of public policy and the interests of justice. *This term signifies that the process of the court must be used bona fide and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation*. The categories of conduct rendering a

A claim frivolous, vexatious or an abuse of process are not closed and will depend on all the relevant circumstances of the case. A type of conduct which has been judicially acknowledged as an abuse of process is the bringing of an action for a collateral purpose, as was raised by the respondents. In *Lonrho v Fayed (No 5)* [1993] 1 WLR 1489, Stuart-Smith LJ stated that, if an action was not brought B bona fide for the purpose of obtaining relief but for some other ulterior or collateral purpose, it might be struck out as an abuse of the process of the court. (Penekanan ditambah.)

C **[20]** Dalam kes *Wright v Prescot Urban District Council* (1916) 115 LT 772 Neville J berkata di ms 773:

... if when pleadings are delivered the other side think that they disclose no cause of action, or no defence to the action at law, the court may strike them out ...

D Power to strike out the plaintiff's statement of claim is a jurisdiction which ought to be very sparingly exercised and only in very exceptional cases or in cases where it is obvious that the claim is devoid of all merits or cannot possibly succeed on the pleadings *Willis v Earl Beauchamp* (1886) 11 PD 59 (see *Lawrence v Lord Nurreys* [1890] AC 210 at p 219 (see also *Siang Yam Beng lwn Maru Shin Canneries (M) Sdn Bhd & Anor* [1995] 4 MLJ 691 (see *William and Humbert v W & H Trade Marks (Jersey) Ltd* [1986] 1 AC 368 at pp 435–436).

[21] Di atas fakta-fakta, latar belakang dan keadaan kes ini dan seperti dilihat di fakta kronologi yang dinyatakan atau disenaraikan dalam alasan F penghakiman mahkamah ini dalam permohonan untuk penggantungan pelaksanaan (lampiran 14) di guaman sivil 2006 dan setelah memberi pertimbangan kepada prinsip undang-undang dan keperluan dan kepentingan keadilan, mahkamah ini berpuas hati bahawa kes ini adalah satu keadaan di mana tuntutan plaintif-plaintif harus dan patut dibatalkan kerana G ianya merupakan satu tindakan yang remeh, menyusahkan dan penyalahgunaan proses mahkamah (frivolous, vexatious and an abuse of the process of the court). Sebenarnya mahkamah ini mempunyai kuasa yang sedia ada untuk mengawal prosiding di mahkamah ini untuk menghalang (to prevent an abuse of the process of the court, and manifestly groundless cause H of action) seperti dalam kes ini. Seterusnya, seorang peguam sebagai pegawai mahkamah, apabila menerima arahan daripada anak guam dan maklumkan kepada mahkamah untuk merakamkan penghakiman persetujuan, ia berikat, kalau tidak ada kemungkinan anak guam memberi arahan yang tertentu pada hari ini dan esok akan memberi arahan-arahan yang berlainan dan I bertentangan. Dalam keadaan itu, pihak-pihak tidak dapat mencapai satu persetujuan untuk merakamkan penghakiman persetujuan. Oleh demikian, mahkamah ini terpaksa masuk campur di atas keputusan penolong kanan pendaftar yang diberi pada 14 Februari 2008. Dengan itu, rayuan oleh perayu/defendan dibenarkan dengan kos. Keputusan penolong kanan

pendaftar yang diberi pada 14 Februari 2008 (lampiran 25) diketepikan. Saman dalam kamar (lampiran 7) dibenarkan dengan kos dan Guaman Sivil No 22–156 Tahun 2007 dibatalkan.

Rayuan dibenarkan dengan kos.

Reported by Mashrifah Ravendran